

PIRACY IN NIGERIA: USING THE VOLUNTARY IMO MEMBER STATE AUDIT SCHEME AS A COUNTERMEASURE

자발적 IMO MAS를 이용한 나이지리아 해적행위 대응방안

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Abstract: The implementation and enforcement of international maritime security instruments is pivotal to the suppression of piracy. Member states of the International Maritime Organisation are therefore expected to fulfill their treaty obligations in relation to securing the shipping industry. The International Maritime Organisation lacks the power to implement and enforce these security instruments which makes it difficult to monitor member states' implementation of their treaty obligations. As a consequence, the

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regime of Voluntary IMO Member State Audit Scheme allows member states to voluntarily assess their performance regarding the implementation and enforcement of mandatory International Maritime Organisation conventions and other related instruments, through a third party. The implementation of maritime security instruments is an integral part of the multifaceted approach towards suppressing global piracy. Considering the nature of piracy in Nigeria, this paper argues that the use of Voluntary IMO Member State Audit Scheme complements the fight against piracy in the country.

Keywords: Voluntary IMO Member State Audit Scheme, International Maritime Organisation , Piracy, Territorial Waters of Nigeria, Port State Control.

I. Introduction

It is trite that the International Maritime Organisation¹⁾ is responsible for the development of technical, management, safety, security and pollution prevention standards related to maritime transport, but the organisation has no enforcement and compliance monitoring roles. This is because IMO conventions do not contain any provision that empowers it with such authority. In the contemporary maritime world, there is urgent need to bridge this gap. There is no gain-saying the fact that with the drive for greater transparency and accountability among key players in the maritime industry, it has become evident that IMO “needs teeth to ensure compliance” of these conventions.²⁾

1) International Maritime Organisation, hereafter referred to as “IMO.”

2) “Voluntary IMO Member State Audit Scheme” International Maritime Organisation, September, 2013, pp. 2-3. <http://www.imo.int/mtg_docs/rhc/MBSHC/MBSHC18/MBSHC18-D1.1-IMO_VIMSAS_for_

Beyond the statutory roles of member states, it is evident that the amalgam of different actors, like ship-owners, shipping companies, ship managers and shipboard personnel (seafarers), in the maritime sector acting independently could lead to a disjointed regulation and enforcement of shipping standards, with its attendant effect on life, environment, finance, among others. IMO was created precisely to eliminate independent regulatory action by individual actors with the associated consequences, as well as to continuously develop mechanisms to retain confidence amongst nations that international shipping is safe, secure and environmentally sound.³⁾ The regulatory and enforcement responsibilities under the various international maritime instruments are borne by the port and coastal states, but more importantly, the flag state. Thus, it is correct to argue that flag states are granted a lot of latitude in the implementation of international instruments. However, with the growing tsunami of flag of convenience (FOC) and its attendant adverse effects on navigation, port state jurisdiction, through port state control (PSC), stands a better chance of engendering compliance from key players in the shipping sub-sector. This strategy that allows member state, particularly through the platform of PSC is further given fillip by the fact that IMO has no role in its conventions on how its member states implement and enforce their treaty obligations.⁴⁾

Consequent upon these seeming lapses in the conventions, which have created an enabling environment for the abdication of treaty obligations and lukewarm attitude towards security issues by member states, it became

IHO_Sep_2013.pdf) accessed 6 July 2015.

3)) L. D. Barchue, "Making a Case for the Voluntary IMO Member State Audit Scheme," p. 1 <<http://www.imo.org/OurWork/Safety/Implementation/Documents/Voluntary.pdf>> accessed 15 January 2015.

4)) Tatjana Krilic, "IMO Member State Audit Scheme," International Maritime Organisation, October, 2012, p. 3 <http://www.enco.eu/Safetyworkshop/Krilic_IMO_presentation%20handout.pdf> accessed 6 July 2015.

necessary to engage in proper as well as adequate checks and balances. Thus, the need for new approach and new tools for performance measurement and evaluation became unavoidable. This can be achieved by providing constructive and positive process for self-evaluation by a third party upon a uniform basis through the use of an agreed questionnaire which includes criteria and performance indicators and the enablement by the flag state to determine its deficiencies and take positive steps to rectify them. A third party assessment or audit report also provides a veritable opportunity for coastal states to re-evaluate their performance with a view to upgrading and taking care of loose ends.⁵⁾ Against this backdrop, the Voluntary IMO Member State Audit Scheme was established.⁶⁾

Further, the VIMSAS brings about many benefits, such as identifying where capacity-building activities would have the greatest impact, as well as targeting appropriate actions to improve performance, culminating in a safe and secured maritime industry. The IMO member states would also receive valuable feedback, intended to assist them in improving their own capacity to put the applicable instruments into practice. More so, generic lessons learnt from audits could be provided to all IMO member states so that the benefits could be broadly shared and utilized, particularly in the area of policy making. The results of the audits could also be systematically injected back into the regulatory process at IMO to help make measurable improvements in the effectiveness of the international regulatory framework of shipping.⁷⁾

5) Ibid, p. 5.

6) Voluntary IMO Member State Audit Scheme, hereafter referred to as "VIMSAS." Note that the VIMSAS, which is presently voluntary, will become compulsory by 1st January, 2016.

7) "Maritime Safety and Security: Functions and Current Activities of IMO and its Achievements Covering Technical Fields of Shipping Engaged in International Trade," Contribution of the International Maritime Organisation (IMO) to the Secretary-General's Report on Oceans and the Law of the Sea, 2008, p. 11 (http://www.un.org/depts/los/consultative_process/mar_sec_submissions/imo.pdf) accessed 6 July 2015.

These steps are necessary considering the negative impact of piracy in the contemporary world. It is common knowledge that piratical activities portend grave danger to the global maritime industry, international trade and the economic development of coastal states. It must be pointed out that this situation is more severe for coastal states whose economic sustenance depends heavily on the maritime industry; particularly, those that are blessed with huge mineral resources, like Nigeria, that are easily transported by sea. As a corollary, vessels engaging in support services to offshore oil rigs thrive in secured maritime environment. Further, Nigeria has an import dependent economy and therefore the need for safe maritime zones and secured ports cannot be over-emphasised. In other words, piracy goes to the root of Nigeria's economic development and survival as a nation. In addition to the above, the fishing industry, which provides revenue to the country and job for the people in the riverine areas, deserves a tranquil maritime environment to become viable. Against this background, the increasing spate of piratical attacks in the territorial waters of Nigeria therefore is a source of concern to the country as well as the whole world. It becomes imperative to re-strategise to suppress piracy in the territorial sea of Nigeria.

This paper, therefore, contributes to the growing literature on piracy, particularly in the purview of countermeasures to the crime. To achieve this objective, the paper argues that it is important that IMO member states should audit their performances in the absence of the IMO having enforcement and compliance monitoring role over its conventions. This will enable the member states to fulfill their treaty obligations. More so, there should be criteria for performance assessment by member states in a transparent way, particularly in the area of maritime security. The paper therefore examines piracy in the territorial waters of Nigeria with a view to

identifying the nature, root causes and the effects it has on the country. This is followed by the interrogation of the establishment and development of VIMSAS, the examination of the Framework and Procedure of VIMSAS and the analysis of the Audit Scheme Code (III). The challenges in the use of the audit scheme to curb piracy in the territorial waters of Nigeria and the attendant recommendations are further discussed. The paper concludes by stating that although the method for the suppression of piracy is multifaceted, curbing piracy in the territorial waters of Nigeria can be achieved through the framework of the VIMSAS because it ushers in a regime that allows for the implementation and enforcement of international maritime security instruments, as well as other related conventions. It also accommodates other modes of combating the crime. More importantly, the recommendations of the audit report can also be a guide in establishing a new strategy for preventing future piratical attacks.

II. Evaluation of Piracy in Nigerian Territorial Waters

1. Evaluation of Piracy in Nigeria

It is important to note that contemporary piracy generally is related to instability onshore. For instance, the pirates that operate in the Gulf of Guinea, particularly in Nigeria's territorial waters, Somali pirates that hijack vessels off the coast of the Gulf of Aden and the Indonesian pirates that attack ships sailing through the Strait of Malacca, exist due to internal strife

existing in their countries.⁸⁾ More so, modern piracy occurs beyond any geographical limitations. According to international law regime, piracy involves illegal act of violence that occurs on the high seas, and by extension, the exclusive economic zone (EEZ), involving two ships and must be for personal interest.⁹⁾ It is a fact that contemporary piracy occurs essentially in the ports, territorial waters,¹⁰⁾ archipelagic waters and a few times in international waters,¹¹⁾ and Nigerian pirates are no exception. This means that only domestic forces may legally provide armed security within these maritime zones. Thus, due to the fact that the majority of piracy-related incidents in Nigeria occur within 12nm of its coastline, those incidents fall within the country's jurisdiction and protection.¹²⁾ According to International Maritime Bureau (IMB) Report for 2014, 3 piratical attacks took place in Lagos ports.¹³⁾ However, Nigeria, which is a weak state, does not have the capacity to police and monitor activities in its maritime zones, and is incapable of curbing piracy in its maritime areas. More so, such piratical attacks may not require an extra vessel,¹⁴⁾ nor, has the private end

8) Nigerian pirates are essentially made up of Niger Delta Militants whose intention is to destabilise the central government for years of neglect and underdevelopment despite the fact that crude oil, which is the mainstay of Nigerian economy, is found in the region. Again, the militants are motivated to join piracy in order to partake in the "national cake." In the case of Somali, the country was a failed state and as a result of the absence of a central government, pirates, in the guise of preventing illegal fishing and dumping of toxic wastes in Somali waters, engaged in piracy. The Free Aceh Movement (Gerakan Aceh Merdeka, GAM) is a separatist group which uses piracy to fund and actualise their goal in Indonesia.

9) See article 101 of the Law of the Sea Convention, 1982, hereafter referred to as the "LOSC."

10) Attacks that happen within the 12 nautical miles from the coast.

11) Attacks that happen beyond the 12 nm territorial zone of a coastal state.

12) Piracy off the coast of Somali seems to conform with the provision of the LOSC compared to piracy in Nigeria. For detailed analysis of the differences in the piratical attacks in Nigeria and Somali, see Jens V. Madsen, *et al*, "The State of Maritime Piracy 2013," Oceans beyond Piracy, a Project of the One Earth Future Foundation, 2013, p. 51.

13) See ICC IMB, "Piracy and Armed Robbery against Ships, Report for the Period 1 January -31 December, 2014," January, 2015, p. 9. For more information on piracy report for 2013, see ICC IMB, "Piracy and Armed Robbery against Ships, Report for the Period 1 January -31 December, 2013," January, 2014.

requirement settled both legally¹⁵⁾ and scholarly.¹⁶⁾

In the light of the above arguments, the definition of the term piracy in this study will be based on IMB's definition, which states that piracy is "an act of boarding or attempting to board any ship with the apparent intent to commit theft or any other crime and with the apparent intent or capability to use force in the furtherance of that act."¹⁷⁾ This definition of piracy extends the crime to act of armed robbery that could occur on the high seas, the territorial waters, archipelagic waters and ports. Thus, it aptly captures the contemporary pirate acts. The extension of the geographical location of piratical attacks has also been adopted by the United Nations Security Council (UNSC) in the suppression of Somali pirates, which is supported by the fact that where there is a conflict between the provision of the United Nations Charter and the provision of a convention, the former prevails.¹⁸⁾

14) Piratical attacks that occur in ports do not necessarily require the use of a vessel by the pirates.

15) Courts have held that there is a thin line between private ends and public ends. See the cases of *Institute of Cetacean & Others v Sea Shepherd Conservation Society & Another*, D.C. No. 2: 11-cv-02043-RAJ, 2013, p. 4 (<http://cdn.ca9.uscourts.gov/datastore/general/2013/02/25/1235266.pdf>) accessed 6 July 2015 and *Castle John v NV Mabeco* (1986) 77 ILR 537.

16) Writers have also added their weight to the fact that private end and public end may be difficult to separate. See D. Guilfoyle, "Piracy off Somalia: UN Security Council Resolution 1816 and IMO Regional Counterpiracy Efforts," (2008) *International & Comparative Law Quarterly*, Vol. 57, p. 693 and D. Guilfoyle, "Counter-Piracy Law Enforcement and Human Rights," (2010) *International & Comparative Law Quarterly*, Vol. 59, 143.

17) IMB definition of piracy is in line with the trend of contemporary piratical attacks which occur whether the ship is berthed, at anchor or at sea. Thus, the adoption of this definition, which aptly gives a picture of modern piracy, is as a result of the limitations inherent in the legal regime under the LOSC. See ICC International Maritime Bureau, "Piracy and Armed Robbery against Ships, Annual Report, 1 January-31 December, 2009," January, 2010 p. 3.

18) Article 103 of the United Nations Charter 1945. See article 7, paras. (a & b) of UNSC Resolution 1816, S/RES/1816, 2 June 2008; and article 10, paras. (a & b) of the UNSC Resolution 1846, S/RES/1846, 2 December 2008. It is important to note that the provisions of the UNSC Resolutions supersede the provisions of any international treaty or convention. The definition of piracy adopted by the UNSC is provided in para. 2.2 of the Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships, IMO Assembly Resolution A. 1025 (26), adopted 18 December 2009.

Table–1. The Number of Piratical Attacks in Nigeria's Territorial Waters (January 2009–30 December 2014)

Country	2009	2010	2011	2012	2013	2014
Nigeria	29	19	10	27	31	18

Source: Table created by the Author, See the IMB Piracy Report for 2013, p. 5 and IMB Piracy Report for 2014, p. 5.

Table–2. Types of Violence to Crew in Nigeria's Territorial Waters (2013–2014)

Country	Year	Hostage	Threatened	Assault	Injured	Killed	Kidnapped	Missing
Nigeria	2013	43			4	1	34	
	2014	15			1	1	6	

Source: Table created by the Author, See IMB Piracy Report for 2013, p. 11 and IMB Piracy Report for 2014, p. 11.

Table–3. The Number of Global Piratical Attacks

Countries	2009	2010	2011	2012	2013	2014
Nigeria	29	19	10	27	31	18
Somalia	80	139	160	49	7	3
Indonesia	15	40	46	81	106	100
Bangladesh	18	23	10	11	12	21
Columbia	5	3	4	5	7	2

Source: Table created by the Author, See IMB Piracy Report for 2013, p. 5 and IMB Piracy Report for 2014, p. 5.

Table–4. Types of Violence to Crew

Country	Hostage	Threatened	Assault	Injured	Killed	Kidnapped	Missing
Nigeria	15			1	1	6	
Somalia	20						
Indonesia	90	4	1	6			
Bangladesh	3	1		2			
Columbia	1						

Source: Table created by the Author, See IMB Piracy Report for 2014, p. 11.

The number of piratical attacks in the territorial waters of Nigeria has continued to increase. According to IMB, there were 29 attacks in 2009, while in 2010, there were 19 attacks (See Table 1 above). There was a reduction in the number of attacks in 2011, which was 10, but in 2012, it increased to 27 (See Table 1 above). The highest number attacks 31 happened in 2013, which shows that piracy in Nigerian territorial waters is gaining momentum (See Table 1 above). However, during 2014, 18 attacks were recorded in the territorial sea of Nigeria, a noticeable reduction in occurrence compared to the same period in 2013 (See Table 1 above). Comparatively, aside from Indonesia and lately, Bangladesh, piracy in Nigeria has been on the increase, except the slight decrease in the number of attacks that took place in 2014 (See Table 3 above). On the other, piratical attacks in Nigeria have been very violent, sometimes leading to death. This evidently differentiates Nigerian pirates from pirates in other piracy hotspots (See Tables 2 and 4 above).

The spate of incidence of piracy in Nigeria's territorial waters is traceable to the fact that shipping industry plays a crucial rule in the country's economic development. This is because the bastion of Nigerian economy, crude oil, is commonly transported by sea; therefore, attacks are basically targeted at crude oil carrying tankers. Nigerian maritime zones have become very attractive for piracy due to the fact that there has been heavy tanker traffic in the territorial waters Nigeria due to the country's inability to refine crude oil locally. As a consequence, crude oil is exported for refining abroad, while refined products are imported to the country, leading to dense tanker traffic in Nigeria's territorial waters. Pirates therefore target these tankers, as well as support vessels operating in Nigeria offshore oil fields.¹⁹⁾ It is also

19) Kalu K. Anele & Yun-Cheol Lee, "A Study on Strengthening Control of Maritime Piracy in Nigeria's Territorial Waters," (2014) *Maritime Law Review*, Vol. 26, No. 2, p. 25.

common knowledge that government officials and members of the political class sponsor and provide information, as well as protection to some of these pirates.²⁰⁾ These attacks on tankers couple with oil theft have led to the loss of about \$8bn. annually in Nigeria.²¹⁾

Some of the causes of piracy in Nigeria include underdevelopment, unemployment and poverty that pervade the Niger Delta communities where crude oil is exploited in the country. Again, as a result of the exploitation of crude oil in the Niger Delta region, the farmlands and the rivers are polluted with the attendant social and health consequences. It is trite that the regulatory and monitoring institutions in the maritime sector and the petroleum industry as well as the law enforcement agencies in Nigeria is weak and compromised which allows pirates to engage in their dastardly act. Lack of regional cooperation, existence of organised crime, illegal fishing are some of the causes of piracy in Nigeria. However, it must be stated that lack of political will by the government to suppress piracy and prosecute corrupt government officials and members of the political class who are linked to piracy and other forms of maritime insecurity in the country has encouraged the continued existence of piracy in the country.²²⁾

There are plethora of consequences as a result of piracy in the territorial waters of Nigeria. Most importantly, it grossly affects the economy of the

20) Recently, Peoples' Democratic Party (PDP) gubernatorial candidate in Edo State, Mr. Jarrett Tenebe, was arrested by the Economic and Financial Crimes Commission (EFCC) for his involvement in high level oil theft in the country. He revealed that he enjoyed the cover of several top government officials and politicians like Mike Oghiadomhe, a former Chief of Staff to President Goodluck Jonathan; Tony Anenih, chairman of the PDP Board of Trustees; and Diezani Alison Madueke, the Petroleum Resources Minister. See "\$50m found in the Account of PDP Guber Candidate involved in Oil Theft, as EFCC Denies being Manipulable," *Sahara Reporters*, New York, 12 September, 2014 (<http://saharareporters.com/2014/09/12/50m-found-account-pdp-guber-candidate-involved-oil-theft-efcc-denies-being-manipulable>) accessed 6 July 2015.

21) See K.K. Anele & Y. Lee (n. 19).

22) See K.K. Anele & Y. Lee, *ibid*, pp. 30-36.

country, considering the fact that infrastructural development and other commitments by the government are borne from the proceeds generated from the sale of crude oil in the international market. It has a combined effect of scaring prospective vessels away from calling at Nigerian ports and increasing the insurance premium paid by shipping companies, with the spillover effect of increased prices of imported commodities in the country.²³⁾ Piracy in Nigeria also leads to humanitarian situation where seafarers are killed, tortured, shot, kidnapped and exposed to all manners of inhuman and degrading treatments. Post traumatic effect of piracy has an indelible effect on the lives of kidnapped seafarers.²⁴⁾ It could also lead to the pollution of the territorial waters of Nigeria; thus, drastically affecting the lives of people living in the coastal areas and their means of livelihood-fishing. The existence of piracy in Nigeria's territorial waters also paves way for other maritime crimes like arms, human and drug trafficking, dumping of toxic waste and illegal, unregulated and unreported (IUU) fishing.²⁵⁾ Piracy also prevents fishermen from plying their trade in Nigerian waters due to the hijacking of their fishing trawlers. Pirates also use the hijacked fishing trawlers for piracy

23) See generally, Kalu Kingsley Anele, "The Economic Effect of Piracy in Nigeria: An Overview of the Fishing Industry," Korea Institute of Maritime Law, Winter Academic Seminar, 27 February, 2015, pp. 43-73; Freedom C. Onuoha, "Piracy and Maritime Security in the Gulf of Guinea: Trends, Concerns, and Propositions," (2013) *The Journal of the Middle East and Africa*, Vol. 4, No. 3, pp. 289-290 <<https://ndc.academia.edu/FreedomCONUOHA/Papers>> accessed 15 January 2015.

24) Freedom C. Onuoha, "Globalisation, Sea Piracy and Maritime Security of Horn of Africa," (2010) *African Political Science Review*, Vol. 2, No. 1, p. 147.

25) See generally, Jamie Charlebois, "Pirate Economics: The Economic Causes and Consequences of Contemporary Maritime Piracy in Sub-Saharan Africa," Thesis Submitted in Partial of the requirements for the Degree of Master of Development Economics, Dalhousie University, Halifax, Nova Scotia, August 2012 <<http://dalspace.library.dal.ca/bitstream/handle/10222/15429/Charlebois,%20Jamie%20MDE,%20ECON,%20August%202012.pdf?sequence=1>> accessed 6 July 2015; Freedom C. Onuoha & Habiba I. Hassan, "National Security Implications of Sea Piracy in Nigeria's Territorial Waters," (2009) *The Nigerian Army Quarterly Journal*, pp. 1-28; and Christos Kaade, "The Gulf of Guinea: Maritime Piracy's New Global Nerve Center," *Fair Observer*, 3 March, 2014 <http://www.fairobserver.com/region/middle_east_north_africa/gulf-guinea-maritime-piracys-global-nerve-center-18429/> accessed 6 July 2015.

acts and in the process, steal the fishermen's cargo of fish. Thus, revenue from the fishing industry is lost, while jobs of about 50, 000 fishermen are threatened.²⁶⁾

III. Overview of Voluntary IMO Member State Audit Scheme

1. The Historical Development of VIMSAS

In its approach to enhancing maritime safety and security compliance by member states, ship-owners and operators, the IMO has long recognised the value of self-assessments and third party audits. This is crucial considering the fact that recent piracy incidents suggest that the majority of attacks are now linked to vessels that are failing to follow the recommended best practices. A situation that clearly shows that “associated Flag States are also, to varying degrees, delinquent in fulfilling their respective oversight and enforcement roles.”²⁷⁾ The confidence building measures have already been incorporated into the following IMO conventions: International Shipping Management Code (as amended) 2013, (IMS Code), has addressed some of the issues of accountability with respect to companies. The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (as amended) 2010 (STWC) has covered the training and shipboard operational competencies of seafarers. The International Ship and Port

26) D. Nincic, “Maritime Piracy in Africa: The Humanitarian Dimension,” (2009) *African Security Review*, Vol. 18, No. 3, pp. 7-8.

27) J.R.F. Hodgson, “The Role of the International Maritime Organisation in Combating Piracy,” DMPP Research Paper, October, 2011, pp. 19-21.

Facilities Security Code 2002 (ISPS Code) has been introduced to effectively monitor activities in the ports, on board vessel and on land.

In 1999, the IMO took its tentative and definitive first steps at promoting assessments of flag state performance when it launched a voluntary self-assessment scheme for flag states. Two years later, however, the responses by IMO member states were unsatisfactory.²⁸⁾ This lack of interest by flag states continued to 2004, when only 54 of the 162 IMO member states had submitted their self-assessments to the IMO. In June 2002, in response to the IMO's mixed experience with the self-assessment scheme, the IMO Council approved, in principle, a VIMSAS by a third party that would replace self-assessments.²⁹⁾

The following year, the IMO Assembly formally approved the establishment of the VIMSAS and its further development.³⁰⁾ In endorsing the audit scheme adopted earlier by the Council, the IMO Assembly reaffirmed "that States have the primary responsibility to have in place an adequate and effective system to exercise control over ships entitled to fly their flag, and to ensure that they comply with relevant international rules and regulations."³¹⁾ It also stipulated that the decision to launch a voluntary audit scheme was without prejudice to a later decision to make the scheme mandatory.³²⁾ Largely through the work of the Flag State Implementation Sub-committee, the VIMSAS and the related Code for the Implementation of Mandatory IMO Instruments were further developed and expanded during the

28) See the Statement of the Secretary General of IMO in the Report of the Sub-Committee on Flag State Implementation-9th Session: 19-23 February, 2001 <http://www.imo.org/blast/mainframe.asp?topic_id=106&doc_id=453> accessed 6 July 2015.

29) Craig H. Allen, "Revisiting the Thames Formula: The Evolving Role of the International Maritime Organisation and Its Member States in Implementing the 1982 Law of the Sea Convention," (2009) San Diego Int'l L.J., Vol. 10, p. 318.

30) See paras. 1 & 2 of IMO Resolution A. 946(23) Adopted on 27 November 2003

31) See preamble, *ibid*.

32) See para. 1, *ibid*.

subsequent years.³³⁾

The regime of the VIMSAS allows auditors drawn from various IMO member states usually to examine the audited state's compliance with requirements relevant to its capacity as a flag, port and coastal state, in accordance with the Code for the Implementation of Mandatory IMO Instruments. The process begins with a request to the IMO Secretary-General, completion of a pre-audit questionnaire and a memorandum of cooperation, which sets out the scope of the audit and the respective IMO and member state responsibilities. Denmark was the first country to volunteer for an audit; followed by the United Kingdom, Spain, Chile and Japan. By 2012, more than sixty-four countries,³⁴⁾ including the United States, had volunteered and fifty-five audits³⁵⁾ had been carried out. More so, Panama, Liberia, Cyprus, the Marshall 4 Islands, Vanuatu, and Belize, who are major open registry countries, also volunteered to be audited.³⁶⁾ In support of the call by IMO to assist in the scheme, international organisations responded by developing a guidance documents to assist IMO member states in preparing for audits.³⁷⁾

Some of the relevant mandatory IMO instruments that propagate enhanced safety and security of the maritime transportation that require auditing which are necessary in the suppression of piracy include the ISPS Code, the ISM Code, the STCW. The ISPS Code is very crucial in the general architecture of beefing up security of the shipping industry which could ultimately prevent the commission of piracy. This is done through the designated duties and

33) See generally IMO Resolution A.975 (24) Adopted on 1 December 2005; IMO Resolution A.974 (24) Adopted on 1 December 2005; and C. H. Allen (n. 29) p. 319.

34) "Voluntary IMO Member State Audit Scheme (VIMSAS)" 12th North Indian Ocean Hydrographic Commission Conference, Colombo, Sri Lanka, 20-23 March, 2012 <http://www.imo.int/mtg_docs/rhc/NIOHC/NIOHC12/NIOHC12-VIMSAS-IMO.pdf> accessed 15 January 2015.

35) *Ibid.*

36) C. H. Allen (n. 29) pp. 319-320.

37) *Ibid.*, p. 320.

requirements to the contracting governments, ships, shipping companies, port facilities and documentation as well as certification. The ISM Code is particularly important because it provides safeguards against all identified risks and ensures continuously improved safety management skills of personnel ashore and on board ships, including preparing for emergencies related to safety as well as security of the ship. The STCW spells out the nature and standard of training for the crew of the ship (seafarers). This is pivotal considering the fact that it is the crew that confronts pirates. Therefore, they need to be properly trained and qualified in order to be fit and ready in the execution of their responsibilities, particularly, in securing the vessel from piratical attacks. In furtherance of the training of crew members, it is very important that the health, wages and other labour related issues of seafarers are given top priority by governments and ship-owners. Seafarers, it must be emphasised, play an important role in the suppression of piracy since they are the ones that are in the line of duty when attacks, kidnappings and hijacking of vessels are done. In view of this, the ratification, domestication and enforcement of the Maritime Labour Convention, 2006, (MLC) is a condition sine qua non in the protection of the rights, health, entitlements and other labour related issues of the seafarers. The ripple effect is that seafarers will be well motivated to give their best to protect their vessels from pirates. The Convention for the Suppression of Unlawful acts against the Safety of Maritime Navigation, 1988 (SUA Convention) was enacted due to the inherent limitations of the definition of piracy under the LOSC regime. The SUA Convention, therefore, expanded the scope of piracy and other unlawful acts on ships regime in the terms of geographical location of occurrence, nature of attack, prosecution, among others. These features make the SUA Convention useful tool in the fight

against piracy.

Responses to the audit scheme have been generally favorable. In 2003, the United Nations General Assembly (UNGA) noted with approval the IMO's decision to adopt the scheme and what was then still a draft code for the implementation of mandatory IMO instruments.³⁸⁾ Domestically, the United States Congress, through legislation, directed the Coast Guard to work with the responsible officials and agencies of other nations to accelerate efforts at the IMO to enhance oversight and enforcement of security, environmental, and other agreements, including an audit regime for evaluating flag state performance.³⁹⁾ Two years later, the UNGA embraced the progress made in the VIMSAS and urged all flag states to volunteer for the audits.⁴⁰⁾

2. Summary of the Final Reports of the Audit of Countries

In conducting the audit report on Turkey, the programme set out in appendix 2 of the Framework and Procedure of the VIMSAS⁴¹⁾ was used. The methodology used include a series of visits, interviews, examination of written records, computer databases, and other objective evidence which would determine the extent to which the Turkey's maritime administration achieved the objectives of the audit.⁴²⁾

38) See paras. 44 of the Report of the Secretary-General of the United Nations General Assembly, A/58/65/Add.1 (Addendum 1), 29 August, 2003.

39) See s. 801 of the Coast Guard and Maritime Transport Act, 2006, of the United States of America (U.S.A.).

40) See para. 79 of the United Nations General Assembly Resolution 62/215, A/RES/62/215, 14 March, 2008.

41) Appendix 2 of the Framework and Procedures for the IMO Member State Audit Scheme, IMO Resolution A.1067(28), 4 December, 2013, which is a prototype questionnaire for obtaining relevant information from the member state.

42) Para. 7.4 of the Final Report of the Voluntary IMO Member State Audit Scheme, Audit of Turkey, 30 September to 7 October, 2013 (http://www.ubak.gov.tr/BLSM_WIYS/DISGM/tr/doc/20140616_153325_66968_1_64.pdf) accessed 6 July 2015, hereafter referred to as "the Turkey Report." See

One of the pivotal elements in auditing exercise is the determination of the existence of legislations that bolster the implementation and enforcement of IMO instruments. The importance of legislation goes beyond the domestication of the IMO instruments and culminates in the making of regulations, guidelines, orders and policies as an implementation and enforcement strategy. This is very crucial in adding specificity to the requirement of the law. More so, they are relevant in giving effect and simplifying the technical aspects of IMO instruments, as well as domestic maritime requirements.⁴³⁾

In furtherance of the achievements of the goals of the audit, the Australian Maritime Safety Authority (AMSA), which is the government organisation primarily responsible for the implementation and enforcement of maritime safety and environmental protection programmes associated with Australia's obligations under the mandatory IMO instruments published a corporate plan for the period 2008-2011. This plan was complemented by the plans at the departmental level and also by the plans of supporting organisations which contribute to the overall legal and regulatory missions of the government with respect to maritime safety and environmental protection.⁴⁴⁾ In Turkey, a reviewed strategy⁴⁵⁾ to incorporate the objectives of the

para. 7 of the Final Report of the Voluntary IMO Member State Audit Scheme, Audit of Australia, 18 to 25 August, 2008 (http://www.amsa.gov.au/forms-and-publications/about-amsa/publications/AMSA-Aboard/2009-Winter/documents/Audit_Report_Australia_05-02-09.pdf) accessed 6 July 2015, hereafter referred to as "the Australia Report."

43) See paras. 8,2,7-8,2,8 of the Australia Report; paras. 8,1,10-8,1,11 of the Turkey Report; and paras. 8,1,3-8,1,7 of the Final Report of the Voluntary IMO Member State Audit Scheme, Audit of the Faroe Islands, 29 October to 7 November, 2011 (http://www.fma.fo/get_file?ID=10206) accessed 6 July 2015.

44) The corporate plan includes objectives for the continuous improvement in the areas of commercial ship safety, environmental protection and response, safety of navigation, search and rescue. Each area has a desired organisational performance objective and measurements for achievement of those objectives. Although the majority of funding for AMSA is accomplished through the collection of maritime industry directed user fees (levies), the allocation of this resource is also subject to review at the National Governmental level and is tied to achievement of performance objectives.

Audit Code in the maritime activities in the country was introduced. Evidently, the strategy was developed in close cooperation among all entities concerned. There were consultations among the various organisations that allowed for input of all parties involved.⁴⁶⁾

Summarily, the introduction of the audit scheme has engendered the regime of self-appraisal amongst member states. There is a re-awakening of the need to take safety and security of the maritime sector seriously. Many member states have gone beyond their obligations and responsibilities under the IMO instruments on safety and security by being proactive through making regulations and orders to that effect.⁴⁷⁾ Installation of facilities, training programmes for personnel, legislations (including regulations and orders), inter-agency cooperation, among others, are now entrenched in countries that have been audited.⁴⁸⁾ These approaches are necessary in maintaining the security of vessels both in ports and in the maritime zones of coastal states.

See 8.1.3 of the Australia Report.

45) The first IMO strategy was defined in the Prime Minister's Circular (n. 2010/23). It went through series of reviews. Para. 8.1.7 of the Turkey Report. See also 8.1.2 of the Faroe Island Report.

46) See para. 8.1.9 of the Turkey Report.

47) See para. 11.1.1 (4) of the Turkey Report; and para. 11.2 of the Australia Report.

48) See generally, the Turkey Report, the Faroe Island Report and the Australia Report.

IV. A Critical Evaluation of the Application of the Framework and Procedures for the Audit Scheme and the IMO Instruments Implementation Code (III) to Suppress Piracy in Nigeria

1. The VIMSAS Framework and Procedure

It must be stated that the purpose of the framework and procedure for the VIMSAS is to aptly describe the objective, principles, scope, responsibilities and capacity-building aspect of the IMO member state audit, which together constitute the strategy for the audit.⁴⁹⁾ The Framework and Procedure is supported by the IMO Instruments Implementation Code (III).⁵⁰⁾ It is important to reiterate the point that VIMSAS establishes a platform to assess the extent to which a member state complies with the IMO obligations set out in the various IMO instruments it is a party to. More so, there are principles a member state should adhere to in order for its maritime administration to deliver on its responsibilities with respect to maritime safety and protection of the marine environment, and be capable of improving its performance in the discharge of its duties.⁵¹⁾

It is instructive to note that since IMO does not have power to enforce the implementation of its instruments, the VIMSAS becomes a vehicle for the organisation to determine the extent member states are implementing and

49) See para. 1.1 of the Framework and Procedures for the IMO Member State Audit Scheme, IMO Resolution A.1067 (28), 5 December, 2013, hereafter referred to as "the Framework and Procedure."

50) Para. 1.2, *ibid*.

51) See para. 2.1 of the Faroe Island Report; para. 2.1 of the Australian Report; and para. 2.1 of the Turkey Report.

enforcing the applicable IMO instruments.⁵²⁾ In this regard, through VIMSAS, IMO would determine whether the member state has enacted appropriate law for the applicable IMO instruments relating to maritime safety, security and prevention of pollution to which it is a party.⁵³⁾ This is important in the fight against piracy considering the fact that Nigeria has not domesticated most of the IMO conventions, including other related international instruments, on maritime security. For instance, Nigeria has not domesticated the LOSC, the Convention for the Suppression of Unlawful Act against the Safety of Maritime Navigation, 1988 (SUA Convention), MLC, 2006, among others.⁵⁴⁾

In relation to the mechanism and controls in place, by which the delegation of authority by a member state to a recognised organisation for the purpose of implementing convention requirements related to safety,⁵⁵⁾ as well as security, the Nigerian Maritime Administrative and Safety Agency (NIMASA) has not been effective. NIMASA is the agency responsible for the implementation and enforcement of all maritime instruments in Nigeria⁵⁶⁾ and the agency is faced with many challenges ranging from non-domestication of the instruments to corruption, lack of facilities, and inadequate funding.

In furtherance of the above, the audits should be positive and constructive in approach and carried out in accordance with the established procedures. In addition, audits should be organised and conducted in a way which recognises

52) Para. 5.1 of the Framework and Procedure.

53) Para. 5.1 (2), *ibid.*

54) Note that Nigeria has ratified the LOSC 1982 and the MLC 2006, however, they must be domesticated in accordance with s. 12 of the 1999 Constitution of the Federal Republic of Nigeria. At the time of preparing this paper, a cursory look at the website of Nigerian legislature, National Assembly website, showed that the ISM Code, the MLC, 2006, the SUA Convention and the STCW were not domesticated in Nigeria. See Nigerian National Assembly Homepage (<http://www.nassnig.org/hass/legislation.php>) accessed 19 January 2015.

55) Para. 5.1 (4) of the Framework and Procedure.

56) S. 22 (q) of the NIMASA Act, 2007.

the sovereignty of a member state to enact laws and to create implementation and enforcement mechanisms for such laws, consistent with its obligations and responsibilities enshrined in the IMO instruments to which it is a party to. More importantly, all member states should be subject to the same principles, process and procedures for the conduct of the audit.⁵⁷⁾

2. The VIMSAS Code (III)

The objective of the VIMSAS Code (III) is to enhance universal maritime safety and protection of the marine environment and assist states in the implementation of instruments of the organisation,⁵⁸⁾ which they are party to. More importantly, the implementation of these IMO instruments can be done through the platform of the port state, flag state or coastal state depending on the geography and circumstances of a particular state.⁵⁹⁾ However, in view of the escalating incidences of piracy in the territorial waters of Nigeria, the focus should be channeled more to the port state responsibilities. It is important to note that in implementing IMO instruments in accordance with the Code, Nigeria, as a member state, should develop a strategy to ensure that its international obligations and responsibilities as a flag, port and coastal state are met. More so, it is important to create a methodology to monitor and assess the strategy to ensure effective implementation and enforcement of relevant international mandatory instruments, and regularly review the strategy to achieve, maintain and improve the overall organisational performance and capability as a flag, port and coastal state.⁶⁰⁾

57) Para. 6.1 of the Framework and Procedure.

58) S. 1, Part 1 of the IMO Implementation Code (III), IMO Resolution A.1070 (28), 13 December, 2013, hereafter referred to as "the Code."

59) S. 2, Part 1, *ibid*.

In furtherance of its responsibilities, Nigerian government is expected to enact legislations and regulations, as well as, take all other steps which may be necessary to give those instruments full and complete effect in order to ensure safety and security of life at sea and the protection of the marine environment.⁶¹⁾ It is also the duty of Nigerian government to make laws that permit effective jurisdiction and control in administrative, technical and social matters over vessels flying its flag, particularly, provide the legal basis for the general requirements for registries, the inspection of ships, safety and pollution prevention laws applicable to such vessels and the making of associated regulations. There should also be associated investigative and penal processes and the availability of adequate personnel with maritime expertise to assist in the enactment of the relevant national laws and to discharge all the responsibilities of the state, including reporting as required by the respective conventions.⁶²⁾

The use of PSC is crucial in the VIMSAS regime. Thus, PSC obligations are relevant in the determination, implementation and enforcement of the IMO instruments, which are at the core of the VIMSAS. It is important to note that in the discharge of their duties, Nigeria, as a port state, should impose the conditions of relevant instruments on the vessels of both parties and non-parties to the IMO conventions.⁶³⁾ However, PSC officers and persons assisting them should be free from commercial, financial, and other pressures and have no commercial interest, either in the port of inspection or elsewhere, nor should the PSC officers be employed by or undertake work on behalf of recognised organisations or classification societies. In addition, there

60) S. 3 (1-3), Part 1, *ibid*.

61) S. 4, Part 1, *ibid*.

62) S. 8 (1-3), *ibid*.

63) See para. 1.5 of IMO Resolution A.1052(27) for the "procedures for Port State Control, 2011," A 27/Res. 1052, 20 December, 2011.

should be implementation procedures that will ensure that persons or organisations external to the port state cannot influence the results of port state inspection and control carried out.⁶⁴⁾ “A port state should periodically evaluate its performance in respect of exercising its rights and meeting its obligations under the applicable instruments of the Organization.”⁶⁵⁾

The international maritime security instruments can effectively and efficiently be implemented and enforced in Nigeria through the instrumentality of PSC to achieve the purposes of the VIMSAS. For instance, PSC is a conduit for implementing the ISPS Code, which Nigeria has domesticated, but has not fully complied with its provisions. The ISPS Code represents a significant change in the approach of the international maritime industries to the issue of security in the maritime transport sector. The implementation of its provisions requires the relentless effective co-operation and understanding between all those involved with, or using, ships and port facilities, including ship’s personnel, port personnel, passengers, cargo interests, ship and port management and those in National and Local Authorities with security responsibilities. More importantly, there is a synergy between the provisions of the ISPS Code, on the one side, and the STCW and the ISM (Code), on the other side.⁶⁶⁾

The objective of the ISM Code is to provide an international standard for the safe management and operation of ships and pollution prevention, which the occurrence of piratical attacks will undermine. To achieve the purpose of the Code, the commitment, competence, attitudes and motivation of individual at all levels must be top-notch. The Code also creates an enabling

64) See generally ss. 57-62, *ibid*.

65) S. 63, *ibid*.

66) See generally The International Convention for the Safety of Life at Sea (Ratification and Enforcement) Act, 2004.

environment where appropriate organisation of management responds to the need of those on board ships to achieve and maintain high standards of safety and environmental protection. The PSC officer is instrumental in making sure that the provisions of the Code are met by management of the ship, the ship-owners and the seafarers.

It must be stated that the competence and training of seafarers goes to the root of their attitude during security and safety situation. Competent and properly trained seafarers, especially on the use of facilities onboard the ship and within the port and maritime zones of a coastal state, could forestall piratical attacks on their vessel. In view of this, the STCW provides that certificates for masters, officers or ratings shall be issued to candidates, who, to the satisfaction of the Administration, meet the requirements for service, age, medical fitness, training, qualification and examinations in accordance with appropriate provisions of the annex to the Convention.⁶⁷⁾ It is the duty of the PSC officer to determine that the required competence and certificate are acquired by prospective seafarers entering its port.

⁶⁷⁾ See generally, the STCW (as amended).

V. Challenges and Recommendations for the Use of Voluntary IMO Member State Audit Scheme to Suppress Piracy in Nigeria's Territorial Waters

1. Challenges in the Use of VIMSAS to Suppress Piracy in Nigeria's Territorial Waters

1) Non-domestication of IMO Instruments and other Related Conventions

Presently, Nigeria has not domesticated most of the maritime security instruments which makes it difficult to do a proper auditing in the country. It has also affected the fight against piracy in the country. For instance, the LOSC and the SUA Convention which provide the legal regime for the meaning, domestication, prosecution and cooperation in the fight against piracy; and the MLC, which caters for the well-being of seafarers, have not been domesticated. Therefore, presently, piracy may not be a crime and these conventions may not be used to suppress piracy in the country.

(1) Inadequate Facilities

Another challenge in the use of VIMSAS in suppressing piracy in Nigeria is the absence or inadequate facilities in the country's maritime sector. The ports in Nigeria are still struggling to comply with the provisions of the ISPS Code. More so, the Nigerian Navy and NIMASA and other regulatory agencies in the maritime sector like the Nigerian Ports Authority (NPA), are also ill-equipped to implement and enforce IMO security instruments, as well as tackle piracy in Nigeria.

(2) Lack of Trained Personnel

The implementation and enforcement of IMO instruments, making of regulations and manning of maritime facilities need specially trained personnel. Personnel are hardly trained and re-trained in Nigeria, which makes it difficult for effective and efficient implementation and enforcement of IMO instruments. For example, PSC officers in Nigeria do not get adequate training needed for their job, thereby creating an environment where piracy thrives.

(3) Inadequate Fund

In furtherance of the above, NIMASA and the Nigerian Navy are most times starved of funds to procure state of the art facilities for the execution of their duties. Lack or inadequate fund also means that training programmes are not undertaken by these regulatory and security institutions in the country. In such a situation, it will be difficult to properly engage in an audit scheme that will yield positive result and the incidence of piracy will continue to occur in the country's territorial waters.

(4) Corruption

One of the chief reasons why funds are in short supply is corruption. Corruption in the oil sector has led to the depletion of funds that could have been used for the development of infrastructure to secure Nigerian coastline and ports.⁶⁸⁾ Additionally, there is institutional corruption in the maritime

68) See Report of the Senate Committee on Finance on the Investigation of the Alleged Unremitted US\$49.8 Billion Oil Revenue by Nigerian National Petroleum Corporation (NNPC), May, 2014; Memorandum Submitted to the Senate Committee on Finance on the Non-Remittance of Oil Revenue to the Federation Account, by the CBN Governor, February, 2014; The House of Representatives Report of the Ad-hoc Committee "To Verify and Determine the Actual Subsidy Requirements and Monitor the Implementation of the Subsidy Regime in Nigeria," Resolution No. (HR.1/2012), 18 April, 2012; NEITI's 2012 EITI Report in Compliance with Requirement 21 (c) of the EITI Rules, 2011 Edition; Report of the Petroleum Revenue Special Task Force, August, 2012.

sector in Nigeria, particularly in NIMASA,⁶⁹⁾ the Nigerian Navy and other security agencies in the country.⁷⁰⁾ The effect of corruption is the inability to effectively implement and enforce IMO instruments and the protection of Nigeria's territorial waters from the grips of pirates.

(5) Absence of Auditing of the Maritime Administration in Nigeria

The introduction of the VIMSAS is to assess a member state's implementation and enforcement of the IMO instruments with a view to suggesting ways to improve on that. Thus, when a member state maritime administration has been audited, there are obvious improvements in all spheres of the sector. However, Nigeria has not been audited which could translate to under performance, owing to the fact that most of IMO instruments on maritime security have not been domesticated in the country and piracy has continued to thrive.⁷¹⁾

(6) Lack of Political Will by the Nigerian Government

It is an open secret that the effective implementation and enforcement of IMO instruments and other security related instruments for both the audit scheme and the suppression of piracy depends essentially on the willingness of the government in power to comply with its responsibilities and obligations under international law. It seems that Nigerian government has not taken any bold step towards enforcing and implementing IMO instruments, and by

69) Andrew Airahuobhor, "Tackling Corruption in Nigeria's Territorial Waters," Daily Independent, <<http://dailyindependentnig.com/2014/08/tackling-corruption-nigerias-territorial-waters/>> accessed 6 July 2015.

70) Dirk Steffen, "Use and Abuse in Nigerian Maritime Security," *The Maritime Executive*, 1 July, 2014 <<http://www.maritime-executive.com/article/Use-and-Abuse-in-Nigerian-Maritime-Security-2014-07-01>> accessed 6 July 2015.

71) At the time of preparing this paper, there was nothing linking Nigeria to VIMSAS except the fact that the country intends to be audited during the regime of compulsory audit scheme in 2016.

extension, suppressing piracy. Many of the elites have been linked to corrupt practices and questionable transactions without being prosecuted. This undermines the fight against piracy, corruption and money laundering in the country.⁷²⁾

(7) Lack of Regional Cooperation

In line with the multi-dimensional approach toward suppressing piracy, the use of VIMSAS without more would not be an effective tool to achieve that objective. The obvious absence of regional cooperation among West African countries and countries that have their coastline in the Gulf of Guinea will subvert any genuine attempt to curb piracy in Nigeria. More so, due to lack of regional cooperation that culminates in information sharing, joint military training and exercises, which is a tool used by ReCAAP⁷³⁾ to effectively reduce the incidence of piracy in Asia, will not be utilised.⁷⁴⁾

72) Recent events in the country have shown that government of Nigeria is foot dragging when it comes to corrupt by government officials or party members. The lack of political will to prosecute corrupt government officials involved in oil theft in Nigeria can be seen from the attitude of the Economic and Financial Crimes Commission (EFCC) in the handling of the alleged revelation by Mr. Jarrett Tenebe, a People's Democratic Party (PDP) gubernatorial candidate in Edo State, that Mike Oghiadomhe, A former Chief of Staff to the President, Goodluck Jonathan, Tony Anenih, chair of the board of trustees of the PDP, and Petroleum Minister, Diezani Alison Madueke were covering his illicit activity of oil theft in the country. See *Sahara Report* (n. 17). The untoward nature of the arms deals between Nigeria and South Africa orchestrated by purported government representatives shows the impunity that is ravaging the country. See "Cash-for-Arms Deal: Transportation of \$9,3m in a Jet looks like a classic case of Money laundering-South Africa," *Sahara Reporters*, 18 September, 2014 (<http://saharareporters.com/2014/09/18/cash-arms-deal-transportation-93m-jet-looks-classic-case-money-laundering%E2%80%93south-africa>) accessed 6 July 2015; "South Africa Busts another Secret Nigeria Arms Deal, Seizes \$5,7 Million," *Sahara Reporters*, 6 October 2014 (<http://saharareporters.com/2014/10/06/south-africa-busts-another-secret-nigeria-arms-deal-seizes-57-million>) accessed 6 July 2015; "South Africa Seizes another \$5,7m Nigeria's Arms Deal," *Vanguard*, 6 October 2014 (<http://www.vanguardngr.com/2014/10/south-africa-seizes-another-5-7-m-nigerian-arms-deal/>) accessed 6 July 2015.

73) ReCAAP means Regional Cooperation Agreement on Combating Armed Robbery against Ships in Asia.

74) See generally, ReCAAP/ISC, "Piracy and Armed Robbery against in Asia," Annual Report, January-December 2013.

2. Recommendations for the Suppression of Piracy in Nigeria's Territorial Waters Using VIMSAS

(1) Political Will by the Nigerian Government

It is pivotal that Nigerian government must show the willingness to implement and enforce IMO instruments and suppress piracy. This it must do by, first, making sure that all the ratified IMO instruments, particularly those that affects maritime security, are domesticated in accordance with the Constitution of Nigeria. Second, those who are involved in corruption scandals should be investigated and prosecuted. Third, piracy sponsors and businesses linked to pirates or their sponsors should be investigated and prosecuted in accordance with domestic laws. It is important to note that Nigerian government has to provide adequate funds that will be used to procure state of the art surveillance facilities and training for the officials of the regulatory and security agencies.

(2) Regional Cooperation

Since the objective of the VIMSAS is to evaluate the implementation and enforcement of IMO instruments by member state with a view to recommending ways of being compliant and by extension sustaining the fight against piracy, there is need for regional cooperation among nations. Many of the IMO instruments and other related instruments advocate for such cooperation, particularly in the areas of information sharing, maritime domain awareness and joint military exercises and cooperation. This is exemplified by the success the ReCAAP has achieved in reducing the incidence of piracy in Southeast Asia.⁷⁵⁾

75) See ReCAAP/ISC *ibid*.

(3) Use of Soft Laws

The use of VIMSAS in combating piracy will also be complemented immensely by the implementation and enforcement of soft laws by ship-owners. First of all, ship-owners, on their part, should engage private armed security personnel (PASP) on board their vessels, a position that has the support of the UNSC.⁷⁶⁾ Ship-owners, however, should ensure that these armed guards follow the provisions of the guidelines for the engagement of PASP on vessels.⁷⁷⁾ Ship-owners should also make sure that members of the crew are acquainted with the best management practices to protect their vessels from being hijacked by pirates.⁷⁸⁾

(4) Implementation of the Recommendations of the Audit Report

The VIMSAS recommendations are also very important in securing the maritime environment of a state. Thus, Nigeria government has to submit to voluntary self-evaluation by a third party to ensure effective implementation and enforcement of IMO security conventions and other related international instruments. It is important that Nigeria subjects itself to VIMSAS in other

76) See para. 26 of the UNSC Resolution 2125, S/RES/2125, 18 November, 2013 & para.30 of the UNSC Resolution 2077, S/RES/2077, 21 November, 2012.

77) IMO Interim Guidance to Private Maritime Security Companies Providing Privately Contracted Armed Security Personnel on Board Ships in the High Risk Area: 2012 (http://www.steamshipmutual.com/Downloads/Piracy/PCASP_MSC.1Circ.1405.pdf) accessed 6 July 2015 & Interim Guidance to UK Flagged Shipping on the Use of Guards to defend against the Threat of Piracy in Exceptional Circumstance, 2013, Department for Transport, Version1.2 (https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/204123/use-of-armed-guards-to-defend-against-piracy.pdf) accessed 6 July 2015.

78) See para. 15 of the UNSC Resolution 1897/RES/1897, 30 November 2009; para. 12 of the UNSC Resolution 1851, S/RES/1851, 16 December 2008; ABS and Security Association for the Maritime Industry (SAMI)(2011), "A Guide to BMP4; Maritime Organisations made up of The Baltic and International Maritime Council (BIMCO), International Chamber of Shipping (ICS), International Association of Dry Cargo Shipowners (INTERCARGO); INTERTANKO and NATO Shipping Centre, "Interim Guidelines for Owners, Operators and masters for Protection against Piracy in the Gulf of Guinea Region," (To be read in conjunction with BMP4).

to implement the recommendations of the audit report. More so, the audit report should be a clarion call for the effective and efficient implementation and enforcement of IMO instruments.

VI. Conclusion

It is trite that the inability of IMO to enforce its instruments may lead to states' abdicating their responsibilities and treaty obligations. This position has been manifested in the continuous disregard by flag states in matters relating to seaworthiness of vessels, certification of seafarers, labour and other related issues, among others. Both coastal and port states have not also thrived well in implementing IMO instruments in view of the fact that most of them, like Nigeria, have not domesticated some of these instruments. The introduction of the voluntary audit scheme by a third party is an indirect way for IMO to know the level of commitment by state parties with a view to suggest ways of improvement. Thus, the regime of voluntary audit scheme, which will soon be compulsory in January 2016, ushers in a platform for enhanced implementation and enforcement of IMO instruments by member states. In relation to piracy, the regime entrenches proper training and improved labour conditions for seafarers who can confront piratical challenges professionally. There is awareness of the need to secure the ports and territorial waters of member states to forestall the activities of pirates through the procurement of the facilities to monitor and police those maritime zones. The audit scheme will also culminate in the coordination of effective information sharing, training exercises, maritime domain awareness strategies and other collaborative efforts toward the suppression of piracy, in line with

the UNSC resolutions, as well as the provisions of IMO instruments and other related conventions. More importantly, the audit scheme will galvanise Nigerian government to domesticate all IMO instruments with a view to implementing and enforcing them, especially in the country's bid to rid its maritime zones of piracy.

투고일 2015. 3. 9.

1차 심사일 2015. 6. 19.

게재확정일 2015. 7. 7.

■ ■ References

1. Allen, Craig H. 2009. "Revisiting the Thames Formula: The Evolving Role of the International Maritime Organisation and Its Member States in Implementing the 1982 Law of the Sea Convention." *San Diego Int'l L.J.*, Vol. 10.
2. Anele, Kalu K. and Yun-Cheol Lee. 2014. "A Study on Strengthening Control of Maritime Piracy in Nigeria's Territorial Waters." *Maritime Law Review*, Vol. 26, No. 2.
3. Nincic, D. 2009. "Maritime Piracy in Africa: The Humanitarian Dimension." *African Security Review*, Vol. 18, No. 3.
4. Onuoha, Freedom C. and Habiba I. Hassan. 2009. "National Security Implications of Sea Piracy in Nigeria's Territorial Waters." *The Nigerian Army Quarterly Journal*.
5. Onuoha, Freedom C. 2010. "Globalisation, Sea Piracy and Maritime Security of Horn of Africa." *African Political Science Review*, Vol. 2, No. 1.
6. Anele, Kalu Kingsley. 2015. "The Economic Effect of Piracy in Nigeria: An Overview of the Fishing Industry." Korea Institute of Maritime Law. Winter Academic Seminar. 27 February, 2015.
7. Hodgson, J. R. F. 2011. "The Role of the International Maritime Organisation in Combating Piracy." DMPP Research Paper. October, 2011.
8. Madsen, Jens V. *et al.* 2013. "The State of Maritime Piracy 2013." Oceans beyond Piracy, a Project of the One Earth Future Foundation.
9. Memorandum Submitted to the Senate Committee on Finance on the Non-Remittance of Oil Revenue to the Federation Account, by the CBN Governor. February, 2014.
10. NEITI's 2012 EITI Report in Compliance with Requirement 21 (c) of the EITI Rules, 2011 Edition.

11. Report of the Petroleum Revenue Special Task Force. August, 2012.
12. Report of the Senate Committee on Finance on the Investigation of the Alleged Unremitted US\$49.8 Billion Oil Revenue by Nigerian National Petroleum Corporation (NNPC). May, 2014.
13. The House of Representatives Report of the Ad-hoc Committee. "To Verify and Determine the Actual Subsidy Requirements and Monitor the Implementation of the Subsidy Regime in Nigeria." Resolution No. (HR.1/2012). 18 April, 2012.
14. Coast Guard and Maritime Transport Act, 2006, U.S.A.
15. International Convention for the Safety of Life at Sea (Ratification and Enforcement) Act, 2004.
16. Nigerian Maritime Administration and Safety Agency Act, 2007.
17. The 1999 Constitution of the Federal republic of Nigeria
18. The Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships, IMO Assembly Resolution A. 1025 (26), adopted 18 December 2009.
19. Framework and Procedures for the IMO Member State Audit Scheme, IMO Resolution A.1067(28). 5 December, 2013.
20. Framework and Procedures for the IMO Member State Audit Scheme, IMO Resolution A.1067 28). 4 December, 2013,
21. ICC International Maritime Bureau. 2015. "Piracy and Armed Robbery against Ships, Report for the Period 1 January-31 December, 2014." January, 2015.
22. ICC International Maritime Bureau. 2014. "Piracy and Armed Robbery against Ships, Report for the Period of 1 January-31 December 2013." January, 2014.
23. ICC International Maritime Bureau. "Piracy and Armed Robbery against Ships, Annual Report, 1 January-31 December, 2009." January 2010.

24. IMO Implementation Code (III), IMO Resolution A.1070 (28). 13 December, 2013.
25. IMO Resolution A.975 (24) Adopted on 1 December 2005; IMO Resolution A.974 (24) Adopted on 1 December 2005.
26. IMO Resolution A. 946(23) Adopted on 27 November 2003.
27. IMO Resolution A.1052(27) for the “procedures for Port State Control, 2011,” A 27/Res. 1052, 20 December, 2011.
28. ReCAAP/ISC. “Piracy and Armed Robbery against in Asia.” Annual Report, January-December 2013.
29. Report of the Secretary-General of the United Nations General Assembly, A/58/65/Add.1 (Addendum 1). 29 August, 2003.
30. Convention for the Suppression of Unlawful acts against the Safety of Maritime Navigation. 1988.
31. International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (as amended) 2010.
32. Maritime Labour Convention. 2006.
33. The International Ship and Port Facilities Security Code 2002.
34. International Shipping Management Code (as amended) 2013.
35. The United Nations Charter 1945.
36. The Law of the Sea Convention 1983.
37. United Nations General Assembly Resolution 62/215, A/RES/62/215. 14 March, 2008.
38. UNSC Resolution 1816, S/RES/1816. 2 June 2008.
39. UNSC Resolution 1846, S/RES/1846. 2 December 2008.
40. ABS and Security Association for the Maritime Industry (SAMI) (2011). “A Guide to BMP4.
41. “A Guide to BMP4; Maritime Organisations made up of The Baltic and

International Maritime Council (BIMCO), International Chamber of Shipping (ICS), International Association of Dry Cargo Shipowners (INTERCARGO); INTERTANKO and NATO Shipping Centre. "Interim Guidelines for Owners, Operators and masters for Protection against Piracy in the Gulf of Guinea Region." (To be read in conjunction with BMP4)

42. Andrew Airahuobhor. "Tackling Corruption in Nigeria's Territorial Waters." *Daily Independent*. <http://dailyindependentnig.com/2014/08/tackling-corruption-nigerias-territorial-waters>. Accessed 6 July 2015.
43. Barchue, L. D. "Making a Case for the Voluntary IMO Member State Audit Scheme." <http://www.imo.org/OurWork/Safety/Implementation/Documents/Voluntary.pdf>. Accessed 15 January 2015.
44. "Cash-for-Arms Deal: Transportation of \$9.3m in a Jet looks like a Classic Case of Money Laundering-South Africa." *Sahara Reporters*, 18 September, 2014. <http://saharareporters.com/2014/09/18/cash-arms-deal-transportation-93m-jet-looks-classic-case-money-laundering%E2%80%93south-africa>. Accessed 6 July 2015.
45. Charlebois, Jamie. "Pirate economics: The Economic Causes and Consequences of Contemporary Maritime Piracy in Sub-Saharan Africa." Thesis Submitted in Partial of the requirements for the Degree of Master of Development Economics, Dalhousie University, Halifax, Nova Scotia, August 2012. <http://dalspace.library.dal.ca/bitstream/handle/10222/15429/Charlebois,%20Jamie,%20MDE,%20ECON,%20August%202012.pdf?sequence=1>. Accessed 6 July 2015.
46. Final Report of the Voluntary IMO Member State Audit Scheme, Audit of the Faroe Islands, 29 October to 7 November, 2011. <http://www.fma.fo/get.file?ID=10206>> accessed 6 July 2015.
47. Final Report of the Voluntary IMO Member State Audit Scheme, Audit of Turkey, 30 September to 7 October, 2013. http://www.ubak.gov.tr/BLSM_WIYS/DISGM/tr/doc/20140616_153325_66968_1_64.pdf. Accessed 6 July 2015.

48. Final Report of the Voluntary IMO Member State Audit Scheme, Audit of Australia, 18 to 25 August, 2008. http://www.amsa.gov.au/forms-and-publications/about-amsa/publications/AMSA-Aboard/2009-Winter/documents/Audit_Report_Australia_05-02-09.pdf. Accessed 6 July 2015.
49. IMO Interim Guidance to Private Maritime Security Companies Providing Privately Contracted Armed Security Personnel on Board Ships in the High Risk Area: 2012. http://www.steamshipmutual.com/Downloads/Piracy/PCASP_MSC.1Circ.1405.pdf. Accessed 6 July 2015.
50. Interim Guidance to UK Flagged Shipping on the Use of Guards to defend against the Threat of Piracy in Exceptional Circumstance. 2013. Department for Transport, Version 1.2. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/204123/use-of-armed-guards-to-defend-against-piracy.pdf. Accessed 6 July 2015.
51. Kaade, Christos. "The Gulf of Guinea: Maritime Piracy's New Global Nerve Center." *Fair Observer*. 3 March, 2014. http://www.fairobserver.com/region/middle_east_north_africa/gulf-guinea-maritime-piracys-global-nerve-center-18429. Accessed 6 July 2015.
52. Krilic, Tatjana. 2012. "IMO Member State Audit Scheme." International Maritime Organisation. October, 2012. http://www.enco.eu/Safetyworkshop/Krilic_IMO_presentation%20handout.pdf. Accessed 6 July 2015.
53. "Maritime Safety and Security: Functions and Current Activities of IMO and its Achievements Covering Technical Fields of Shipping Engaged in International Trade." Contribution of the International Maritime Organisation (IMO) to the Secretary-General's Report on Oceans and the Law of the Sea. 2008. http://www.un.org/depts/los/consultative_process/mar_sec_submissions/imo.pdf. Accessed 6 July 2015.
54. Nigerian National Assembly Homepage. <http://www.nassnig.org/nass/legislation.php>. Accessed 19 January 2015.
55. Onuoha, Freedom C. 2013. "Piracy and Maritime Security in the Gulf of Guinea: Trends, Concerns, and Propositions." *The Journal of the Middle East and Africa*, Vol. 4, No. 3. <https://ndc.academia.edu/FreedomCONUOHA/Papers>.

Accessed 15 January 2015.

56. "South Africa Busts another Secret Nigeria Arms Deal, Seizes \$5.7 Million." *Sahara Reporters*. 6 October 2014. <http://saharareporters.com/2014/10/06/south-africa-busts-another-secret-nigeria-arms-deal-seizes-57-million>. Accessed 6 July 2015.
57. "South Africa Seizes another \$5.7m Nigeria's Arms Deal." *Vanguard*, 6 October 2014. <http://www.vanguardngr.com/2014/10/south-africa-seizes-another-5-7-m-nigerian-arms-deal>. Accessed 6 July 2015.
58. Statement of the Secretary General of IMO in the Report of the Sub-Committee on Flag State Implementation-9th Session: 19-23 February, 2001. http://www.imo.org/blast/mainframe.asp?topic_id=106&doc_id=453. Accessed 3 October 2014.
59. Steffen, Dirk. 2014. "Use and Abuse in Nigerian Maritime Security," *The Maritime Executive*, 1 July, 2014. <http://www.maritime-executive.com/article/Use-and-Abuse-in-Nigeria-n-Maritime-Security-2014-07-01>. accessed 6 July 2015.
60. "Voluntary IMO Member State Audit Scheme (VIMSAS)." 12th North Indian Ocean Hydrographic Commission Conference. Colombo, Sri Lanka. 20-23 March, 2012. http://www.iho.int/mtg_docs/rhc/NIOHC/NIOHC12/NIOHC12-VIMSAS-IMO.pdf. Accessed 15 January 2015.
61. "Voluntary IMO Member State Audit Scheme." International Maritime Organisation. September, 2013. http://www.iho.int/mtg_docs/rhc/MBSHC/MBSHC18/MBSHC18-D1.1-IMO_VIMSAS_for_IHO_Sep_2013.pdf. Accessed 6 July 2015.
62. "\$50m found in the Account of PDP Guber Candidate Involved in Oil Theft, As EFCC Denies being Manipulable." *Sahara Report*, New York, 12 September, 2014. <http://saharareporters.com/2014/09/12/50m-found-account-pdp-guber-candidate-involved-oil-theft-efcc-denies-being-manipulable>. Accessed 6 July 2015.

